

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Z-TEL COMMUNICATIONS, INC.	}	
	}	
Complainant	}	
	}	
vs.	}	Docket No. 02-0160
	}	
ILLINOIS BELL TELEPHONE COMPANY, d/b/a AMERITECH ILLINOIS	}	
	}	
Respondent	}	

PROPOSED ORDER ON REHEARING
(SUBMITTED BY AMERITECH ILLINOIS)

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October 8, 2002

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Complainant

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INTRODUCTION

On February 22, 2002, Z-Tel Communications, Inc. ("Z-Tel") filed with the Illinois Commerce Commission a verified Complaint against Illinois Bell Telephone Company ("Ameritech") pursuant to Sections 13-514, 13-515 and 13-516 of the Public Utilities Act ("Act"). Z-Tel alleged that Ameritech was violating Sections 13-514 and 13-801 of the Act by providing Z-Tel with untimely, inaccurate, unreliable and discriminatory line loss notifications ("LLN"). Z-Tel requested emergency relief enjoining Ameritech from engaging in Winback marketing activity until such time as Ameritech provided identical Line Loss Notifications to Z-Tel as it provided to its own retail operations. Z-Tel also requested permanent relief.

The Commission granted, in part, Z-Tel's request for emergency relief, ordering Ameritech Illinois to delay its Winback marketing efforts for 17 days from the date of customer loss, pending a hearing on the complaint. Following evidentiary hearings, briefs, the Administrative Law Judge's Proposed Decision, exceptions and replies to exceptions, the Commission entered its Final Order on May 8, 2002.

In its Order, the Commission held that Ameritech Illinois had violated subsections (2), (6), (9) and (11) of Section 13-514 and Section 13-801 by providing Z-Tel with untimely, inaccurate and unreliable 836 LLNs while providing its own retail operations with an alternate form of line loss notification that contained more information and was being provided in a more timely fashion.

The Commission directed Ameritech to fix the defects in the 836 LLN process and provide Z-Tel with timely and accurate 836 LLNs. The Commission

also ordered Ameritech to make available to Z-Tel no later than July 1, 2002, the option to receive "more detailed OSS information about disconnected customers containing the same data fields as are currently sent to Ameritech's retail and Winback business units." This optional report, which has been dubbed by Ameritech as the "Local Loss Report" or "LLR," was to be provided in the same timeframe and to contain as much information as was then being sent to Ameritech's retail and Winback business units. Ameritech was ordered to stop using the Local Loss Report until such time as it was made available to Z-Tel and to rely exclusively on the 836 LLN for information on disconnected customers.

Ameritech's failure to provide timely and accurate 836 LLNs had caused Z-Tel to continue billing customers after they had disconnected Z-Tel's service. Z-Tel was required to expend resources investigating double-billing complaints, and the Commission awarded Z-Tel money damages in the amount of \$160,000. Ameritech also was required to send its customers, who were former Z-Tel customers, written notice that any wrongful billing by Z-Tel may have been caused by Ameritech's failure to timely advise Z-Tel that the customer has switched local service. The notice was to be directed to potentially affected customers rather than to all Ameritech customers and was granted primarily on a going forward basis. Z-Tel was required to provide customer-mailing information to Ameritech if Ameritech did not have the appropriate customer information.

The Commission also ordered Ameritech to pay Z-Tel's attorneys' fees and costs in bringing the action and the Commission's costs associated with the proceeding.

With respect to penalties, the Commission held that Ameritech could not be subjected to penalties under Section 13-516 of the Act for its violations of Section 13-514. Section 13-516 specifically exempts a telecommunications carrier from penalties for its first violation of Section 13-514 committed after the effective date of the amended Act (June 30, 2001). Since this was Ameritech's first violation, penalties could not be awarded. Sections 13-304 and 13-305 also provide for imposition of penalties for violation of the Act. However, penalties may not be awarded under Section 13-305 where penalties are provided for under any other provision of the Act. Since Section 13-516 provides penalties for violation of Section 13-514, the Commission held that penalties for the Section 13-514 violations could not be awarded under Sections 13-304 and 13-305. However, the Commission held that penalties could be awarded under Sections 13-304 and 13-305 with respect to Ameritech's violation of Section 13-801. Therefore, the Commission directed that a penalty proceeding should be initiated, with proper notice, against Ameritech to determine whether civil penalties should be imposed under Sections 13-304 and 13-305 for Ameritech's violation of Section 13-801.

The Commission held that the LLN performance measure needed to be revised to more adequately measure Ameritech's LLN performance.

Finally, the Commission continued the emergency relief until such time as Ameritech's retail business units relied exclusively upon the 836 LLN and the defects in the 836 LLN had been corrected. Ameritech was directed to file a report with Staff verifying that 836 LLNs were being provided in a timely and

accurate manner. If Staff did not dispute the Report within 30 days, the emergency relief would end.

Z-Tel did not file an application for rehearing of the Commission's Order.

On June 6, 2002, Ameritech filed an application for rehearing. In addition to requesting rehearing on the liability findings in the Order, Ameritech requested rehearing on two of the remedy provisions. First, Ameritech sought rehearing of the Commission's conclusion that penalties could be awarded under Sections 13-304 and 13-305 for the violation of Section 13-801 found in the Order. Ameritech contended that it was subject to penalties under Section 13-516 for such violation (since the violation of Section 13-514(11) was based upon the violation of Section 13-801); therefore, penalties under Section 13-305 did not apply. Second, Ameritech requested rehearing of the requirement to provide the Local Loss Report to Z-Tel and other CLECs. Ameritech represented that its retail operations had stopped using the Local Loss Report and argued that parity, therefore, had been achieved with Z-Tel. Ameritech contended that the Local Loss Report was redundant to the 836 LLN and would provide no additional benefit to the CLECs.

On June 19, 2002, the Commission denied Ameritech's application for rehearing on the liability findings. However, it granted the application with respect to the two remedy issues.

At a status hearing on June 24, 2002, the parties agreed that the penalty issue presented an issue of statutory interpretation and additional evidentiary hearings were not necessary. A briefing schedule was subsequently established. Ameritech filed its Initial Brief on Rehearing on the Penalty Issue on September 16, 2002. Z-Tel and Staff filed responsive briefs on September 26, 2002 and Ameritech filed its Reply Brief on October 2, 2002.

A hearing schedule was established on the parity issue. Ameritech served its direct testimony on July 26, 2002. Z-Tel filed responsive testimony on September 16, 2002 and Staff filed testimony on September 19, 2002. Ameritech filed its rebuttal testimony on September 24, 2002. A hearing was held for cross-examination of witnesses on September 27, 2002, and the record was marked Heard and Taken. The parties filed simultaneous initial briefs on October 4 and reply briefs on October 8, 2002.

THE PENALTY ISSUE

Positions of the parties

a) *Ameritech.*

Ameritech contends that penalties for violation of Section 13-801 may be imposed under Section 13-516 (except for a first violation); therefore, Section 13-305, which applies "in a case in which a civil penalty is not otherwise provided for in this Act," is inapplicable.

Ameritech states that Sections 13-514, 13-515 and 13-516 were originally enacted together and are closely interrelated. P.A. 90-185, eff. July 23, 1997. Section 13-514 defined prohibited acts by telecommunications carriers; Section 13-515 established procedures for enforcement of Section 13-514, and Section 13-516 provided remedies for violation of Section 13-514. Ameritech states further that Sections 13-514, 13-515 and 13-516 were substantially amended and Section 13-801, in its present form, was added in P.A. 92-22, eff. June 30, 2001. Ameritech notes that Sections 13-514 and Section 13-801 address the same subject matter—an incumbent local exchange carrier's obligations to competitive telecommunications providers—and argues that the legislature intended Sections 13-515 and 13-516 to provide the enforcement procedures and remedies for violations of both sections.

Ameritech argues that the language of Sections 13-514, 13-515 and 13-801 support its position. Under Section 13-514(11), a violation of Section 13-801 is declared a violation of Section 13-514. Ameritech argues that since violations of Section 13-514 are enforceable under Section 13-515 and subject to penalties under Section 13-516, if the Commission imposed a penalty for violation of Section 13-514(11), it would be, by definition, imposing a penalty for violation of Section 13-801. Ameritech contends that it cannot be penalized separately under Section 13-305 for the same violation because by its terms Section 13-305 does not apply if penalties are provided under any other provision of the Act and because it would be inconsistent with the legislature's directive that a carrier should not be penalized for its first violation.

Ameritech argues that the language of Sections 13-515 and 13-801(k) also supports its position. Section 13-801(k) states, "The Commission shall determine any matters in dispute between the incumbent local exchange carrier and the requesting carrier pursuant to Section 13-515 of this Act." Section 13-515 provides procedures that "shall be used to enforce the provisions of Section 13-514." Ameritech argues that this language in combination, along with Section 13-514(11), demonstrates a clear legislative intention that penalties for violation of Section 13-801, if they are warranted, be imposed under Section 13-516.

Ameritech further argues that even if penalties could be imposed under Section 13-305, the Commission should decline to initiate a penalty proceeding in this instance. Ameritech cites several cases in which penalties were reversed as a matter of law because the record did not demonstrate bad faith, intentional misconduct or the higher degree of culpability that must be established to justify civil penalties. Ameritech argues that the record in this proceeding also does not justify penalties in that there was no evidence of intentional misconduct, bad faith, or continuing violation. Ameritech argues that the record shows instead that Ameritech was open and above-board in disclosing the problems with the 836 LLN process, kept the industry and regulatory commissions fully informed of its progress in fixing the problems, set up a high level executive team to address the issues on an expedited basis, and exercised due diligence in fixing the problems. Ameritech also argues that it has been punished enough through the grant of emergency relief, which impaired its ability to market to lost customers, and the damages, attorneys' fees and costs it has paid to Z-Tel.

Finally, Ameritech argues that even if it were subject to penalties under Section 13-305, penalties could not be imposed for the violation of Section 13-801 found in the Commission's Order because the violation occurred before the Commission provided written notice to Ameritech that it was in violation of Section 13-801. Ameritech contends that the Commission's May 8, 2002 Final Order was the first written notice of violation provided by the Commission.

Ameritech relies upon the notice provision of Section 13-305, which provides, "Penalties under this Section shall attach and begin to accrue from the day after written notice is delivered to such party or parties that they are in violation of or have failed to comply with this Act." Ameritech argues that since the Commission is the only entity authorized by Sections 13-304 and 13-305 to take specific actions to assess and collect civil penalties, the notices required by Sections 13-304 and 13-305 necessarily have to be provided by the Commission. If the legislature had intended some other entity to provide the notice, it would have identified that entity.

Ameritech also relies upon legislative history to support its position. During the final House debate on P.A. 92-22, the following exchange occurred between Representative Moore and Representative Hamos specifically for the purpose of establishing legislative intent:

Moore: "Thank you. And following that in Section 13-305 of this Bill, when do penalties begin to accrue?"

Hamos: "I would like to say for purpose of legislative intent that penalties begin to accrue one day after a carrier receives written notice from the ICC of an alleged violation. It is not our intent as the General Assembly that penalties only begin to accrue after the Commission issues an order." (emphasis supplied).

State of Illinois, 92nd General Assembly, House of Representatives, Transcription Debate, May 31, 2001, pp. 32-33.

In this exchange, Representative Hamos specifically stated that the notice must be provided "from the ICC."

b) *Z-Tel*

Z-Tel argues that violations of Section 13-514(11) and Section 13-801 are separate offenses. Z-Tel asserts that the Commission's Order held that the violation of Section 13-801 was independent of the violation of Section 13-514(11). Therefore, according to Z-Tel, while a violation of Section 13-801 may be penalized under Section 13-516(a)(2) as a violation of Section 13-514(11), it may also be separately penalized under Section 13-305 as a violation of Section 13-801. Z-Tel also argues that penalties under Section 13-305 are mandatory and that the Commission must impose penalties pursuant to Section 13-305 for Ameritech's violation of Section 13-801.

With respect to Ameritech's argument that the record does not justify penalties even if a penalty proceeding could be initiated under Sections 13-304 and 13-305, Z-Tel argues that the argument is premature and should be made in

the penalty proceeding, not here. Z-Tel also argues that the record evidence does justify the imposition of penalties in such a proceeding.

With respect to the notice requirement of Section 13-305, Z-Tel argues that its complaint satisfied due process requirements for notice to Ameritech. Alternatively, Z-Tel contends that the Commission's February 27, 2002 Order granting emergency relief satisfied the notice requirement of Section 13-305.

c) *Staff*

Staff argues that penalties for violation of Section 13-801 "can be assessed under Section 13-516 as well as Section 13-305." Staff notes the phrases "In addition to any other provisions of this Act" and "Notwithstanding any other provision of this Act" in Sections 13-516(a) and 13-516(a)(2), respectively, and suggests this language indicates a legislative intention that the penalties under Section 13-516 would be cumulative to the penalties under Section 13-305.

Staff further argues that if Ameritech's position were accepted, a telecommunications carrier alleging a violation of Section 13-801 in a Section 10-108 complaint case would be precluded from requesting penalties under Section 13-305, contrary to the legislature's intent.

As to Ameritech's argument that the record evidence is insufficient to warrant the imposition of penalties, Staff responds that the argument is premature and should be made in the penalty proceeding. Staff argues that the record is more than sufficient to justify the initiation of a penalty proceeding.

With respect to the notice requirement, Staff argues that the Commission should ignore the legislative history because the notice requirement is clear on its face. Staff further argues that whether the notice requirement was satisfied should be decided in the penalty proceeding under Section 13-305 rather than in this proceeding because the issue was not addressed in the Commission's Final Order.

Commission Analysis and Conclusion

The Commission agrees that the issue raised by Ameritech presents exclusively a question of law as to the correct interpretation and application of the various sections of the Act. The language of Section 13-514 clearly states that a violation of Section 13-801 constitutes a violation of Section 13-514(11), and the Commission found in its Final Order that Ameritech's conduct violated both sections. The conduct constituting the violation was the same in both cases. Without the violation of Section 13-801, there would have been no violation of Section 13-514. Therefore, the Commission must reject the positions of Staff and Z-Tel that the violations of Sections 13-514(11) and 13-801 are separate and distinct violations that may be separately penalized under separate provisions of the Act.

All parties agree that Ameritech may be penalized under Section 13-516(a)(2) for conduct that violates Sections 514(11), which is the same conduct that violates Section 13-801. The only reason that penalties may not be imposed in this instance is that the violations found in this proceeding constituted Ameritech's first violation of Sections 13-514 and 13-801 since the effective date of the amended Act. Section 13-516(a)(2) states that penalties may not be imposed for a first violation.

Section 13-305 provides for penalties for violations of the Act but only "in a case in which a civil penalty is not otherwise provided for in this Act." Here, Section 13-516 provides for penalties for the violation of Sections 13-514(11) and 13-801 found in our Order. Therefore, penalties under Section 13-305 are inapplicable and may not be imposed.

Staff's reference to the phrases in Section 13-516 indicating that the remedies under Section 13-516 are cumulative to other remedies provided in the Act does not change our conclusion. The issue is whether penalties may be imposed under Section 13-305, and our decision must be based upon the language of Section 13-305, not Section 13-516. Section 13-305 states that penalties may not be applied if penalties for the same conduct are provided for by another provision of the Act and evidences a clear legislative intention that carriers not be subject to penalties under multiple provisions of the Act.

We agree with Ameritech that Sections 13-514 and 13-801 address the same subject—an incumbent local exchange carrier's obligations to competitive telecommunications providers—and that the legislature intended both provisions to be enforced in the same manner under Sections 13-515 and Section 13-516. Section 13-801(k) explicitly states that violations of Section 13-801 "shall" be enforced under the procedures in Section 13-515. And by declaring a violation of Section 13-801 to also be a violation of Section 13-514, the legislature made clear that violations of Section 13-801 would be subject to all of the remedies provided in Section 13-516, including penalties for a second or subsequent violation.

Finally, we reject Staff's argument regarding complaint cases under Section 10-108. This case was tried and decided under Section 13-515 procedures, and the remedies, including penalties, provided in Section 13-516 are applicable to the violations found in the Commission's Order. Whether a complaint for violation of Section 13-801 could be filed pursuant to Section 10-108 is not determinative of our decision here. However, if the issue were before us, we would have to conclude that the legislature's use of the word "shall" in Section 13-801(k) means that the Section 13-515 procedures are mandatory for Section 13-801 violations.

Because of our decision that penalties may not be imposed under Section 13-305 for the violation of Section 13-801 found in our Order, we are not called upon to determine whether the record evidence is sufficient to justify a penalty proceeding, and we do not address that issue. We also are not called upon to decide the notice issue under Section 13-305. We point out, however, that the only entity specifically authorized in Sections 13-304 and 13-305 to take specific actions to enforce penalties is the Commission. This fact, plus the legislative

history, strongly suggests that the written notice required by Section 13-305 must be provided by the Commission. The carrier demand and complaint provisions of Section 13-515 do not track with and are not easily adapted to the notice requirement of Section 13-305. This buttresses our finding that the legislature intended that penalties for violation of Section 13-801 would be pursued under Section 13-516, not under Section 13-305.

THE PARITY ISSUE

Positions of the Parties.

a) Ameritech

Ameritech witness Beth Lawson testified that in compliance with the Commission's Order, Ameritech made the Local Loss Report available to Z-Tel and other CLECs on June 17, 2002 via Accessible Letter, No. CLECAM02-257. The LLR contains the same line loss information previously provided to Ameritech's retail operations and uses the same programming logic and data (modified to provide Wholesale data), and is available six days a week in the exact same time frame as the report was formerly provided to Ameritech retail.

The LLR is available to CLECs via either e-mail delivery or the CLEC-Online website. CLECs wishing to receive the report online need only access the CLEC Online website at <<https://clec.sbc.com/clec>>. Information posted on CLEC Online contains daily information for the current month and previous month data. Alternatively, if a CLEC notifies its Account Manager that it wants to receive the LLR via e-mail, the request will be processed and the first report will be sent within five days of the request. E-mail delivery contains daily information only. There is no charge for the report in either format. As of July 23, 2002, twenty-five CLECs had viewed the LLR on the website and four had requested to receive it via email.

Ms. Lawson testified that there are several differences between the 836 LLN and the LLR. The date provided on the 836 LLN is the completion date; whereas, the date provided on the LLR is the due date of the disconnect order. Because an order may not actually be completed on the due date, the LLR should not be used as a reliable indicator of when to discontinue billing to a customer. The LLR provides less complete line loss information than the 836 LLN because the LLR does not include circuit losses (telephone lines with no assigned telephone numbers) and some line losses due to partial migrations. Ameritech also pointed out, based upon evidence from the prior record, that the LLR report is not delivered until the second business day after the date of the disconnect, whereas in normal course, the 836 LLN is sent within one hour after service order completion.

Ms. Lawson testified that while the LLR contained additional fields of information, the information was not essential to the line loss notification process, and CLECs had agreed during the collaborative process used to develop the

Uniform and Enhanced Plan of Record implemented pursuant to this Commission's and the FCC's Merger Orders to eliminate unnecessary information.

Ms. Lawson stated that Ameritech's retail operations had stopped using the LLR and had relied exclusively upon the 836 LLN since May 15, 2002. She also confirmed that Ameritech's retail operations had no intention to use the LLR in the future.

Ms. Lawson stated that because the LLR was a less complete and timely indicator of competitive line losses than the 836 LLN, it was unclear whether or how the CLECs would use the report. Also, since Ameritech's retail operations no longer received the LLR, providing it to the CLECs was not required to ensure parity. Ameritech requested that it be allowed to discontinue provision of the LLR.

b) Z-Tel

Z-Tel confirmed in testimony that it does not use the LLR because of the limitations described by Ms. Lawson and because it was not integrated with the 836 LLN. Nevertheless, Z-Tel opposes elimination of the report. Z-Tel argues that the LLR contains several more fields of information than the 836 LLN and the fact that 25 CLECs have looked at the LLR on the website and four have requested email delivery of the report shows that the report is used and does have value to the CLECs.

c) Staff

Staff also opposes elimination of the LLR. Staff argues that the Commission ordered Ameritech to provide the report as a remedy for its past failure to provide the report to the CLECs while it was providing it to its retail operations. Staff also argues that the Commission ordered provision of the report to offset the fact that Ameritech retail does not rely upon the 836 LLN to discontinue billing.

Commission Analysis and Conclusion

The Commission concludes that the requirement to provide the LLR should be deleted from the Commission's Final Order. The evidence is undisputed that the LLR is a less complete (does not include circuit losses and some partial migration losses), accurate (lists due date rather than actual completion date) and timely (provided in two days rather than one hour) indicator of competitive line losses than the 836 LLN. Z-Tel has acknowledged that it does not use the report. While numerous CLECs have accessed the report on the webpage, or via email, no evidence was presented that any of them actually use

or rely upon the report in their business operations. Ameritech's retail operations do not receive or use the LLR and do not intend to use it in the future. Therefore, continuation of the report is not necessary to maintain parity between Ameritech and the CLECs. Staff is in error when it suggests that we ordered Ameritech to provide the LLR as a remedy for Ameritech retail's past use of the report or because Ameritech does not use the 836 LLN as the trigger to stop billing a lost customer. Rather, we ordered Ameritech to provide the report because the Complainant Z-Tel specifically prayed for this relief, and we assumed the report would be useful to them. Since Z-Tel acknowledges that it does not use the report, the reason for provision of the report no longer exists.

MISCELLANEOUS

At the August 22, 2002 Status Hearing following the grant of Ameritech's application for rehearing, Z-Tel alleged that Ameritech's retail business units enjoyed preferential access to ASON information about disconnected customers separate and apart from the 836 LLN and the LLR. Ameritech denied Z-Tel's charge. Nevertheless, the Administrative Law Judge permitted Z-Tel to conduct discovery regarding what information was provided to Ameritech's retail business units on disconnected customers and to address this issue in its responsive testimony. Tr. 424, 432.

In its testimony filed September 16, 2002, Z-Tel stated that it would not object to elimination of the LLR if the Commission would order Ameritech to include four additional fields of information on the 836 LLN: the disconnect reason code ("DRC"), the billing telephone number (BTN), the order number and a contact name of a person to call about errors in the 836 LLN. Z-Tel stated that Ameritech retail service representatives had access to this information by viewing the service order in the ASON system. Z-Tel also stated that information about a customer's account is sent to downstream systems. Z-Tel introduced into evidence as Z-Tel's Exhibit 7.1 Ameritech's Second Supplemental Response to Z-Tel's Fourth Set of Discovery Requests

In her rebuttal testimony, Ameritech witness Beth Lawson pointed out that Z-Tel had not requested modification of the 836 LLN in its verified complaint or amended complaint, the issue had not been addressed in the testimony or briefs in the original proceeding, or the Commission's Order, and Z-Tel had not requested rehearing of the Commission's Order. She also explained that the current content of the 836 LLN is consistent with industry guidelines established by the Ordering and Billing Forum, was agreed to by the CLECs during the collaborative process and has been implemented throughout SBC's 13-state operating territory as part of the Uniform and Enhanced OSS Plan of Record required by the FCC's and this Commission's Merger Orders. She explained that CLECs operating in multiple jurisdictions desired to have a single uniform form of LLN in all states. She stated that modifying the 836 LLN as requested by Z-Tel without input from other CLECs and industry groups would undermine the work of standards setting bodies and weaken the basis for future industry cooperation.

Ms. Lawson stated that if Z-Tel wanted changes to the content of the 836 LLN, it should present its views to the OBF or raise the issue in the Change Management Process or the CLEC Industry Forums conducted by SBC.

Ms. Lawson also discussed the four fields of information requested by Z-Tel, explaining why the requests were unreasonable. Z-Tel already knows the contact name, address, telephone number, fax number and email address of the person to call with questions about its 836 LLNs. Z-Tel also already has the BTN because it assigns the BTN in its own billing system. Inclusion of the Ameritech order number on prior versions of the 836 LLN caused needless confusion for Z-Tel and other CLECs, and the CLECs agreed it should be taken off the report. The DRC is carrier proprietary information and should not be used for marketing purposes, the only use for the DRC identified by Z-Tel.

Ms. Lawson also discussed the issue of parity of access to information in the ASON system. She explained that ASON houses service orders for the installation, removal or change of customer service. Ameritech retail service representatives have access to view service orders in ASON related to Ameritech retail customer accounts. Z-Tel has equivalent access to view service orders in ASON related to Z-Tel customer accounts by using the Order Status Inquiry function of the enhanced Verigate system, which is accessed by the Web Toolbar. Alternatively, Z-Tel may access service order information in ASON using either an EDI or CORBA application-to-application interface. Z-Tel uses the CORBA interface. Using CORBA, Z-Tel may not only view service orders in ASON, it may download the service orders to its own systems and store, format and use the information in any manner it desires.

With respect to information sent to downstream systems, Ms. Lawson explained that the information sent is information from the service order. The information is sent to the downstream provisioning systems that are involved in provisioning the service requested in the service order. What systems receive order information varies depending upon the type of service being requested. The process for entering orders in ASON and distributing them to downstream provisioning systems is the same for both wholesale (CLEC) and retail service orders. Ameritech's downstream provisioning systems are not Ameritech-retail business units. They are provisioning systems used in common for both wholesale and retail service orders.

In its initial brief on rehearing on the parity issue, Ameritech argued that the Commission did not have jurisdiction to consider Z-Tel's request for relief because the Commission may not enter an order broader than the relief requested in the complaint, citing *Alton & Southern Railroad Co. v. Illinois Commerce Commission*, 316 Ill. 625, 630, 147 N. E. 417, 419 (1925) and *Peoples Gas Light and Coke Company v. Illinois Commerce Commission*, 221 Ill. App. 3d 1053, 1060, 583 N.E. 2d 68, 72 (1st Dist. 1991). Ameritech also argued that the Commission could not grant Z-Tel's request because Z-Tel had not requested rehearing of the Commission's Order, and the Order had become final as to Z-Tel, citing 220 ILCS 5/10-113, *Quantum Pipeline Co. v. Illinois Commerce Commission*, 304 Ill. App. 3d 310, 319, 709 N.E. 2d 950, 956 (3rd Dist. 1999); *Commonwealth Edison Company v. Illinois Commerce Commission*, 180 Ill. App.

3d 899, 909, 536 N.E. 2d 724, 730-731 (1st Dist. 1988); *Union Electric Company v. Illinois Commerce Commission*, 39 Ill. 2d 386, 392-394, 235 N.E. 2d 604, 609 (1968); and *Central Northwest Business Men's Ass'n v. Illinois Commerce Commission*, 337 Ill. 149, 158-159, 168 N.E. 890, 893-894 (1929).

Ameritech also argued that Z-Tel had failed to allege and prove that the current form of the 836 LLN violated any law or Commission regulation and that Z-Tel's request for relief was not supported by substantial evidence. Finally, Ameritech argued that the information Z-Tel requested was available from other sources, and Z-Tel should be required to obtain the information from those sources rather than from a Commission-ordered unilateral modification to the industry standard 836 LLN.

The Commission finds that all of Ameritech's arguments have merit. However, those arguments became moot when Z-Tel filed its initial brief. In its brief, Z-Tel totally abandoned the position taken in its testimony, and did not even mention its request to include additional information in the 836 LLN. As such, Z-Tel has waived its request, and it need not be considered further by the Commission.

In place of its previous argument, Z-Tel now requests that Ameritech be required to develop an application-to-application interface that will allow Z-Tel to retrieve on a daily basis all service orders from ASON related to Z-Tel accounts without having to retrieve each order individually. Z-Tel argues that Ameritech-retail business units already enjoy this capability, and Section 13-801 requires that the same capability be made available to Z-Tel.

In its reply brief, Ameritech responds with indignation. It states that Z-Tel's assertion that service order information in ASON is automatically distributed to several Ameritech-retail operating units is a gross distortion of the record evidence. It incorporates its prior arguments that the request is beyond the scope of the issues framed by the complaint, beyond the scope of rehearing and beyond the Commission's jurisdiction to consider. Ameritech notes that Z-Tel's latest request exceeds the scope of rehearing specifically established by the Administrative Law Judge on August 22, 2002, in that it is not limited to information on disconnected customers. Ameritech also notes that Z-Tel already has the capability to retrieve its orders from ASON on a daily basis as clearly shown in the record evidence, including evidence submitted by Z-Tel.

Commission Analysis and Conclusion

Z-Tel has repeatedly made allegations that Ameritech provides greater information about disconnected customers to its retail business units than it provides to Z-Tel, but Z-Tel has failed to prove any of its allegations. Z-Tel alleged that Ameritech retail service representatives could view service order information in ASON, but Z-Tel could not. The evidence proves that Z-Tel has the same capability to view service orders in ASON as Ameritech retail service representatives by using the Order Status Inquiry function of the Verigate system, which is accessed via the Internet. Z-Tel can also view service orders

using the Order Status Inquiry function of its CORBA application-to-application interface. The evidence shows that Z-Tel, in fact, uses these functions regularly. An EDI application-to-application interface also exists that permits this function.

Z-Tel alleged that order information in ASON is automatically distributed to several Ameritech-retail operating units in a batch process. Z-Tel bases this allegation on the fact that ASON service order information is distributed to downstream provisioning systems that are used to provision both wholesale (CLEC) and retail service orders. However, downstream provisioning systems are not Ameritech-retail operating units. There is no evidence that service orders in ASON are distributed to multiple Ameritech retail operating units in a “batch” process. The Commission agrees with Ameritech that Z-Tel has ignored the record evidence and grossly distorted other evidence in attempting to support this allegation.

Z-Tel alleged that it should have the capability to retrieve all of the service orders related to its accounts through a “batch” process on a daily basis (even though there is no evidence that Ameritech’s retail operating units have or use this capability). The evidence, however, shows that Z-Tel already has this capability using its CORBA application-to-application interface. What makes this allegation even more improper is that it was first made after the record on rehearing was marked Heard and Taken and after evidence had already been presented (some of it by Z-Tel) demonstrating that Z-Tel had this capability.

The Commission is at a loss to understand Z-Tel’s conduct during this rehearing proceeding. The record evidence clearly shows that Z-Tel has equivalent access to service order information in ASON as that enjoyed by Ameritech’s retail operating units. The evidence also shows that Ameritech’s retail operations rely exclusively on the 836 LLN to receive competitive line loss information.

The Public Utilities Act, due process and this Commission’s rules require an orderly procedure for prosecuting complaints and for rehearing proceedings. A party is required to state a cause of action and identify the relief requested in its complaint and to present evidence to prove its case. A party may not argue an issue in its brief that was not raised in the complaint or supported in the record evidence. A party that is not satisfied with the relief granted by the Commission must file an application for rehearing with the Commission before it is legally entitled to request additional relief. Z-Tel has satisfied none of these requirements. Therefore, the Commission cannot and should not consider the relief requested by Z-Tel.

FINDINGS AND ORDERING PARAGRAPHS.

1. Except as stated in the text of this Order, the Commission has jurisdiction of the subject matter and the parties to this proceeding.
2. The only issues upon which the Commission granted rehearing and which should be considered in this rehearing are whether penalties can or

should be imposed under Sections 13-304 and 13-305 of the Act for Ameritech's violation of Section 13-801, and whether the requirement for Ameritech to provide the Local Loss Report should be eliminated from the Commission's order.

3. Penalties may not be imposed under Sections 13-304 and 13-305 for Ameritech's violation of Section 13-801 found in the Commission's Order because Section 13-516(a)(2) provides penalties for a violation of Section 13-801 as a violation of Section 13-514(11). Section 13-305 does not apply where penalties are provided for in another provision of the Act.
4. The Local Loss Report is not used by Z-Tel, and it is not received or used by Ameritech's retail operations. The requirement for Ameritech to provide this report on a going forward basis should be eliminated.
5. The recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record herein and are adopted as findings of fact and conclusions of law.

IT IS THEREFORE ORDERED that Ameritech is not subject to penalties under Sections 13-304 and 13-305 for its violation of Section 13-801 because penalties for such violation are provided for in Section 13-516 of the Act. No penalty proceeding shall be initiated with respect to the violations of the Act found in the Commission's May 8, 2002 Final Order.

IT IS FURTHER ORDERED that the requirement for Ameritech to provide to Z-Tel and other CLECs the enhanced LLN (Local Loss Report) previously provided to Ameritech's retail operating units is eliminated on a going forward basis.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this ____ day of November, 2002